

No. 6866

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

\_\_\_\_\_ 19

PAN AMERICAN PETROLEUM COMPANY,  
a corporation,  
Libelant and Appellant,

vs.

OIL SCREW BERGEN, her engines, machinery, boilers,  
boats, tackle, apparel and furniture, etc.,  
Respondent,

STAR AND CRESCENT BOAT COMPANY,  
Claimant and Appellee.

\_\_\_\_\_

**Transcript of Record.**

\_\_\_\_\_

Upon Appeal from the United States District Court for the Southern  
District of California, Southern Division.

**FILED**

**JUN 13 1932**

**PAUL P. O'BRIEN,  
CLERK**



No.

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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PAN AMERICAN PETROLEUM COMPANY,  
a corporation,

Libelant and Appellant,

vs.

OIL SCREW BERGEN, her engines, machinery, boilers,  
boats, tackle, apparel and furniture, etc.,

Respondent,

STAR AND CRESCENT BOAT COMPANY,

Claimant and Appellee.

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Upon Appeal from the United States District Court for the Southern  
District of California, Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Proctors.

For Libellant and Appellant:

H. F. PRINCE, Esq.,

IRA C. POWERS, Esq.,

GIBSON, DUNN & CRUTCHER, Esqs.,

634 South Spring Street,

Los Angeles, California.

For Claimant and Appellee:

GRAY, GARY, AMES & DRISCOLL, Esqs.,

J. D. Spreckels Building,

San Diego, California.

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA IN ADMIRALTY

oooooooooooo

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, )	
	)
	) Libelant, )
	)
vs. )	) LIBEL FOR
	) MATERIAL
	)
	) AND
OIL SCREW BERGEN, her en- )	
gines, machinery, boilers, boats, )	) SUPPLIES
tackle, apparel and furniture, etc., )	)
	)
	) Respondent. )

oooooooooooo

To the Honorable District Court of the United States for the Southern District of California, Southern Division:

The libel of PAN AMERICAN PETROLEUM COMPANY, a corporation, against OIL SCREW BERGEN, her engines, machinery, boilers, boats, tackle, apparel, furniture, etc., and against all persons lawfully intervening for their interest therein in a cause of contract civil and maritime, alleges:

I.

That libelant is a corporation duly organized and existing and authorized to transact business in the State of California, and that the said vessel, her engines, machinery, boilers, boats, tackle, apparel, furniture, etc., is



now within the port of San Diego, San Diego County, within the Southern District of California.

II.

That during the months of September and October, 1928, libelant furnished and supplied to said vessel at the port of San Pedro, certain material and supplies, consisting of oil, gasoline, kerosene, amber diesel fuel and black diesel fuel of the reasonable and agreed value of Two Thousand Sixty-two and 31/100 Dollars (\$2,062.31); that all of said material and supplies were furnished to said vessel by libelant upon the order and at the request of the master of said vessel and of one J. E. Heston, who was then the managing owner and agent of said vessel.

III.

That neither the owner of said vessel nor the agent nor the master have paid the said sum of Two Thousand Sixty-two and 31/100 Dollars (\$2,062.31), or any part thereof, although demand therefor has been duly made, and that no part of said sum has been paid and the whole amount thereof, together with interest thereon from October 26, 1928, is due and owing to libelant.

IV.

That all and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelant prays that process in due form of law according to the practice of this Honorable Court in cases of Admiralty and Maritime jurisdiction, may issue against oil Screw Bergen, her engines, machinery, boilers, boats, tackle, apparel and furniture, etc., and that all persons claiming any right, title or interest therein may be cited to appear and answer upon oath all

and singular the matters aforesaid, and that said vessel, her engines, machinery, boilers, boats, tackle, apparel and furniture, etc., may be condemned and sold to pay said sum of Two Thousand Sixty-two and 31/100 Dollars (\$2,062.31), together with interest from November 10, 1928 and that said sum be paid to libelant and the proceeds of sale according to the order of this Honorable Court in such cases, and that libelant may have such other and further relief as in law and justice it may be entitled to receive.

GIBSON, DUNN & CRUTCHER,  
By H. F. Prince  
Proctors for Libelant.

Ira C. Powers  
Of Counsel.

STATE OF CALIFORNIA,         )  
  ) ss:  
COUNTY OF LOS ANGELES. )

AFFIDAVIT

G. P. LYONS, being duly sworn, deposes and says: That he is the Assistant Secretary of the libelant above named; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

G. P. Lyons

Subscribed and sworn to before me this 30th day of July, 1929,

[Seal]

O. L. Weidman

Notary Public in and for the County of Los Angeles,  
State of California.

My Commission Expires June 17, 1933

[Endorsed]: No. 21-J Civil District Court of the United States In and for the Southern District of California Southern Division In Admiralty Pan American Petroleum Company, a corporation, Libelant, vs. Oil Screw Bergen, her engines machinery, boilers, boats, tackle, etc. Respondent. Libel for Material and Supplies

Filed Aug. 15, 1929 R. S. Zimmerman, Clerk by Edmund L. Smith, Deputy Clerk. Gibson, Dunn & Crutcher 1111 Merchants National Bank Building N. E. Cor. Sixth and Spring Sts. Los Angeles, Cal. Proctors for Libelant

---

SOUTHERN DISTRICT OF CALIFORNIA, ss:

---

The President of the United States of America  
To the Marshal of the United States for the Southern  
District of California, GREETING:

[Seal] WHEREAS, a libel in Rem hath been filed in the District Court of the United States for the Southern District of California, on the 15th day of August, in the year of our Lord one thousand nine hundred and twenty-nine, by Pan American Petroleum Company, a corporation, against OIL SCREW BERGEN, her engines, machinery, boilers, boats, tackle, apparel, furniture, etc., and against all persons lawfully intervening for their interest therein in a cause of contract civil and maritime, for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said OIL SCREW BERGEN or vessel, her tackle,

etc., may be cited in general and special to answer the premises, and all proceedings being had that the said OIL SCREW BERGEN or vessel, her tackle, etc., may for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libelant.

You are, therefore, hereby commanded to attach the said OIL SCREW BERGEN or vessel, her tackle, etc., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Southern District of California, on the 3rd day of September, A. D. 1929, at 10 o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the Honorable Wm P James, Judge of said Court, at the City of Los Angeles, in the Southern District of California, this 15th day of August, in the year of our Lord one thousand nine hundred and twenty-nine, and of our independence the one hundred and fifty-fourth

R. S. ZIMMERMAN

Clerk.

By Edmund L. Smith

Deputy Clerk.

Gibson, Dunn & Crutcher

Proctor for Libelant.

In obedience to the within Monition, I attached the Oil Screw Bergen, etc therein described, on the 16th day of August, 1929, and have given due notice to all persons claiming the same, that this Court will, on the 3rd day of September, 1929 (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated August 16th, 1929

A. C. Sittel

U. S. Marshal.

By J. K. Wilson

Deputy.

Marshal's Fees.....	\$2.30
Mileage .....	\$
Expenses .....	\$
	<hr/>
Total.....	\$2.30

[Endorsed]: Marshal's Civil Docket No. 9982 No. 21-J Civil United States District Court Southern District of California Southern Division Pan American Petroleum Company, etc., plaintiff vs. Oil Screw Bergen etc., defendants Monition returnable 2nd Sept., 1929 Gibson, Dunn & Crutcher Proctor for Libelant. Issued Aug. 15, 1929 Filed Sep. 16, 1929 R. S. Zimmerman Clerk. By M. L. Gaines Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

-----:
   
PAN-AMERICAN PETROLEUM            In Admiralty
   
COMPANY, a corporation,               :       No. 21J
   
  
  Libelant, :   CLAIM OF
   
  STAR &
   
  CRESCENT
   
  BOAT
   
  COMPANY.
   
vs.   :
   
THE OIL SCREW "BERGEN", :   her tackle, apparel, and furniture,
   
  
-----;

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The claim of Star & Crescent Boat Company to the Oil Screw "Bergen", her tackle, apparel and furniture, now in the custody of the Marshal of the United States for the Southern District of California, at the suit of Pan-American Petroleum Company alleges:

That said Star & Crescent Boat Company is the true and bona fide owner of the said Oil Screw "Bergen", her tackle, apparel and furniture, and that no other person is owner thereof.

WHEREFORE, the claimant prays that this Honorable Court will be pleased to decree a restitution of the same to claimant and otherwise right and justice to administer in the premises.

GRAY, CARY, AMES & DRISCOLL
By J. G. Driscoll Jr.
Proctors for Claimant.

STATE OF CALIFORNIA )  
   ) ss  
 County of San Diego            )

O. J. HALL, being first duly sworn, deposes and says:  
 That he is the President of the Star & Crescent Boat  
 Company, claimant herein; that he has read the foregoing  
 CLAIM OF STAR & CRESCENT BOAT COMPANY  
 and knows the contents thereof, and that the same is true  
 of his own knowledge.

O. J. Hall

Subscribed and sworn to before me this 18th day of  
August, 1929.

[Seal]                                 Josephine Irving,  
 Notary Public in and for County of San Diego,  
 State of California

[Endorsed]: In the District Court of the United  
 States, in and for the Southern District of California,  
 Southern Division. Pan American Petroleum Company,  
 a corporation, libelant, vs. The Oil Screw "Bergen", her  
 tackle, apparel and furniture. In Admiralty No. 21  
 C. J. Claim of Star & Crescent Boat Company. Filed  
 Aug. 19, 1929. R. S. Zimmerman, Clerk, by D. W.  
 Ramsey, Deputy Clerk. Gray, Cary, Ames & Driscoll,  
 attorneys at law J. D. Spreckels Bldg. San Diego, Cali-  
 fornia, Proctors for Claimant

Premium charged for this bond is \$10.00 per annum

IN THE CENTRAL DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
IN ADMIRALTY

oooooooo

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, )	
)	
Libelant, )	
)	LIBELANT'S
vs. )	STIPULATION
)	FOR COSTS.
OIL SCREW BERGEN, her en- )	
gines, machinery, boilers, boats, tackle, )	Stipulation entered
apparel, furniture, etc., )	into pursuant to
)	the rules and prac-
Respondent. )	tice of this Court.

oooooooo

WHEREAS, a libel was filed in this Court the 15th day of August, 1929 by PAN AMERICAN PETROLEUM COMPANY, a corporation, against OIL SCREW BERGEN, her engines, machinery, boilers, boats, tackle, apparel, furniture, etc., for the reasons and causes in said libel mentioned, and the said Pan American Petroleum Company, a corporation, libelant above named, by G. P. LYONS, Assistant Secretary, and Columbia Casualty Company, an accredited surety company, surety for the libelant, hereby consenting that in case of default or contumacy on the part of the libelant, execution for the sum of Two Hundred Fifty Dollars (\$250.) may issue against the parties hereto, their goods, chattels and lands.



NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, hereby bound in the sum of Two Hundred Fifty Dollars (\$250.), conditioned that the libelant above named shall pay all costs and expenses which shall be awarded against it by a final decree of this court, or upon an appeal, by the Appellate Court.

PAN AMERICAN PETROLEUM COMPANY,  
[Seal]                         By: G. P. Lyons  
  Assistant Secretary.

COLUMBIA CASUALTY COMPANY,  
By: C. E. Putnam  
C. E. Putnam  
  Attorney-in-Fact

Attest: M. Eby  
M. Eby Attorney-in-Fact

Examined and recommended for approval as provided in Rule 28.

A. M. Bradley  
Attorney

I hereby approve the foregoing bond.

Dated: August 15, 1929.

R. S. Zimmerman, Clerk U. S. District Court  
Southern District of California  
By Edmund L. Smith, Deputy

State of California            }  
 County of Los Angeles } ss.

On this 2nd day of August, A. D. 1929 before me, Marie Butler, a Notary Public in and for the county of Los Angeles, personally appeared C. E. Putnam, attorney-in-fact of the COLUMBIA CASUALTY COMPANY, to me personally known to be the individual described in and who executed the within instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposeth and saith, that he is the said Attorney-in-fact of the company aforesaid, and that the seal affixed to the within instrument is the corporate seal of the said Company and that the said corporate seal and his signature as such Attorney-in-fact were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the city of Los Angeles, State of California, the day and year first above written.

[Seal]

Marie Butler

Notary Public in and for said County of Los Angeles,  
 State of California.

My Commission Expires Oct. 25, 1931

[Endorsed]: No. 21-J Civil District Court of the United States In and for the Southern District of California Southern Division Pan American Petroleum Company, a corporation, Libelant, vs. Oil Screw Bergen, her engines, etc. Respondent. Libelant's Stipulation for Costs Filed Aug. 15, 1929 R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk. Gibson, Dunn & Crutcher 1111 Fidelity Building N. E. Cor. Sixth and Spring Sts. Los Angeles, Cal. Attorneys for Libelant

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA IN ADMIRALTY

PAN AMERICAN PETROLEUM COMPANY, a corporation, vs. OIL SCREW BERGEN, her engines, machinery, boilers, boats, tackle, apparel and furniture, etc., Libelant, Respondent. AFFIDAVIT OF SERVICE BY MAILING. No. 21-C-J

STATE OF CALIFORNIA ) County of San Diego ) ss

C. O. MEIER, being first duly sworn, deposes and says:

That she is an employee in the offices of Gray, Cary, Ames & Driscoll, proctors for respondent in the above entitled action; that the proctors for the libelant, to-wit: Gibson, Dunn & Crutcher reside in the City of Los Angeles, California, and have their offices therein; that said Gray, Cary, Ames & Driscoll have their offices in the City of San Diego, California; that affiant served the attached Answer to Libel and Interrogatories Attached Thereto upon said proctors for the libelant herein on the 21st day of September, 1929, by enclosing a true copy thereof in an envelope addressed to said Gibson, Dunn & Crutcher, 1111 Fidelity Building, N. E. Cor. Sixth and Spring Streets, Los Angeles, that being the address of said proctors for the libelant; that the postage on said envelope

was prepaid and that the same was by affiant on said 21st day of September, 1929, deposited in the United States Post Office in San Diego, California; that between the said City of Los Angeles and the said City of San Diego, California, there at all times herein mentioned was, and now is, a regular communication by mail.

C. O. Meier

Subscribed and sworn to before me this 21st day of September, 1929.

[Seal]

Josephine Irving

Notary Public in and for the County of San Diego,  
State of California

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
IN ADMIRALTY

-----  
PAN AMERICAN PETRO-  
LEUM COMPANY, a cor-  
poration,

No. 21-C-J

Libelant,

- ANSWER TO LIBEL  
AND  
- INTERROGATORIES  
ATTACHED  
THERE TO.

vs.

OIL SCREW BERGEN,  
her engine, machinery, boilers,  
boats, tackle, apparel and fur-  
niture, etc.,

Respondent.

-----

To the Honorable, the Judges of the United States Dis-  
trict Court for the Southern District of California,  
Southern Division:

The answer of the Star And Crescent Boat Company,  
now the owner of the Oil Screw "Bergen", to the libel

of the Pan American Petroleum Company in a cause of contract, civil and maritime, is as follows:

I.

Claimant admits the allegations contained in paragraph I of said libel.

II

Claimant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph II of said libel, and basing its denial on such ground denies each and all of the allegations in said paragraph contained.

III

Claimant admits that it has not paid libelant the sum two thousand sixty-two and 31/100 dollars (\$2,062.31), or any part thereof, but has no knowledge or information sufficient to form a belief as to the other allegations contained in said paragraph III, and basing its denial on such ground denies each and all of the remaining allegations in said paragraph contained.

IV

Claimant admits the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court, but denies that all and singular the premises are true.

AND FOR A FURTHER ANSWER to said libel, and by way of a further and separate defense thereto claimant alleges:

V

That claimant is a corporation duly organized and existing under and by virtue of the laws of the state of California.

## VI

That prior to the times mentioned in said libel during which it is alleged that materials and supplies were furnished to said vessel by libelant claimant was the owner of said Oil Screw "Bergen", and sold said vessel, its tackle, apparel, furniture, etc. to John E. Heston, and as a part of the consideration therefor said John E. Heston executed his promissory note bearing date the 1st day of July, 1927, payable to the order of claimant in the principal sum of forty thousand dollars (\$40,000.00), and for the purpose of securing the payment thereof the said John E. Heston made, executed and delivered to claimant, as mortgagee, a preferred mortgage bearing date the 30th day of September, 1927.

## VII

That in and by the terms of said preferred mortgage the said John E. Heston granted, bargained, sold, conveyed, transferred, assigned, mortgaged and set over to claimant the whole of said Oil Screw "Bergen", together with her engines, motors, boilers, machinery, masts, bowsprits, boats, anchors, cables, rigging, tackle, apparel, furniture, and all other appurtenances thereunto appertaining and belonging, provided that if the said John E. Heston should pay to claimant, as mortgagee, the said principal sum of forty thousand dollars (\$40,000.00), together with interest thereon at the rate of seven per cent per annum, according to the tenor and effect of said promissory note, and should keep and perform all the covenants and conditions in said preferred mortgage contained, then the said mortgage and the estate and interest thereby created should cease and determine, otherwise to remain in full force and effect. That a copy of said pre-

ferred mortgage, marked Exhibit A, is attached hereto and made a part hereof as fully as though the same were herein set out at length.

## VIII

That at the time the said preferred mortgage was made, executed and delivered to claimant, and during all of the times the materials and supplies were alleged to have been furnished by libelant to said vessel, the same was, and now is duly registered under the laws of the United State of America, having its home port in the port of Los Angeles, California.

## IX

That said preferred mortgage was duly filed for record in the office of the Collector of Customs of the port of Los Angeles, the home port of said vessel, and the port nearest the residence of the owner of said vessel, and was duly recorded in said office of the Collector of Customs in Book 1349/1 of Mortgages, Page 18 et seq, at 3:10 P. M. on the 21st day of October, 1927, which said record shows the name of the vessel, the parties to the mortgage, the time and date of the reception of the mortgage, the interest in the vessel mortgaged, and the amount and date of maturity of the mortgage, in accordance with section 30, sub-section C of the Merchant Marine Act of the Congress of the United States of June 5, 1920.

## X

Claimant is informed and believes and alleges the fact to be that said preferred mortgage was endorsed upon the documents of said Oil Screw "Bergen" in accordance with the provisions of section 30 of the Merchant Marine Act of June 5, 1920, and was recorded as provided by said

section 30, sub-section C of said Merchant Marine Act; that an affidavit was filed with the record of said mortgage to the effect that the mortgage was made in good faith and without any design to hinder, delay or defraud any existing or future creditors of the mortgagor, or any lienor of said vessel; that the original of said affidavit was attached to the original mortgage; that the said mortgage did not stipulate that the mortgagee waived the preferred status thereof. That all of the acts and things required to be done by said Merchant Marine Act of June 5, 1920, in order to give to the said mortgage the status of a preferred mortgage were either duly done, or caused to be done by claimant, or said John E. Heston, or said *said* Collector of Customs of the port of Los Angeles.

## XI

The claimant is informed and believes and alleges the fact to be that the Collector of Customs of the port of Los Angeles upon the recording of said preferred mortgage delivered two certified copies thereof to the mortgagor, the said John E. Heston, who placed, and used due diligence to retain one copy on board the Oil Screw "Bergen", and caused the said copy and documents of said vessel to be exhibited by the Master to any person having business with the vessel, which might give rise to a maritime lien upon said vessel, or to the sale, conveyance, or mortgage thereof, and at all times since then the Master of said vessel upon the request of any such person has exhibited to him the documents of said vessel, and the copy of said preferred mortgage placed on board thereof.



## XII

That the said preferred mortgage stated the interest of the mortgagor in the Oil Screw "Bergen", and the interest conveyed or mortgaged, and before the same was recorded said mortgage had been acknowledged within the state of California, county of Los Angeles, before a Notary Public authorized by the laws of the state of California and of the United States to take acknowledgements of deeds within said county and state.

## XIII

That in and by the terms of said mortgage it was and is provided as follows: "Neither the mortgagor nor the Master of the vessel shall have any right, power or authority to grant, incur or permit to be placed or imposed upon the property, subject or to become subject to this mortgage, any lien whatsoever other than for crews wages, wages of stevedores and salvage". That at no time did claimant authorize the said mortgagor nor the Master of said vessel to create, incur or permit to be placed or imposed upon the said vessel any lien whatsoever.

AND FOR A FURTHER ANSWER to said libel, and by way of a second and separate defense thereto claimant alleges:

## XIV.

Claimant alleges upon information and belief that if any materials or supplies were delivered to said Oil Screw "Bergen", as alleged in the libel, the same were delivered for the purpose of being transported, and in fact were transported by said Oil Screw "Bergen" as a carrier or tender to various fish canners and fishing boats

being operated in waters off the coast of Lower California, and that the major portion of any such materials and/or supplies were delivered to said canners and said fishing boats and were not used by or benefitted said Oil Screw "Bergen".

WHEREFORE, having fully answered said libel, claimant prays to be hence dismissed at the cost of libelant.

GRAY, CARY, AMES & DRISCOLL

By J. G. DRISCOLL Jr.

Proctors for Respondent

STATE OF CALIFORNIA, )  
 ) ss.  
 COUNTY OF SAN DIEGO, )

O. J. Hall, being first duly sworn, deposes and says:

That he is the President of the Star And Crescent Boat Company, the owner of the Oil Screw "Bergen" named as respondent in the foregoing answer to libel; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

O. J. HALL

Subscribed and sworn to before me this 21st day of September, 1929.

[Seal]

JOSEPHINE IRVING

Notary Public in and for the county of San Diego, State of California.

COPY

PREFERRED MORTGAGE

THIS MORTGAGE, made this 30th day of September, 1927, by and between JOHN E. HESTON of the City of San Pedro, California, hereinafter called the Mortgagor, first party, and STAR & CRESCENT BOAT COMPANY, a corporation, duly organized and existing under the laws of the State of California, hereinafter called the Mortgagee, second party:

WHEREAS, the Mortgagor is the sole owner of a certain motor vessel known as the "BERGEN", official No. 116,997, of about 247.98 gross tons and 132 net tons register; which vessel is more fully described in the certificate of registry, a true and correct copy of which is attached hereto; and,

WHEREAS, the Mortgagor is justly indebted to the Mortgagee in the sum of Forty Thousand Dollars (\$40,000.00) upon the purchase price of said vessel; and,

WHEREAS, the Mortgagor has, for the purpose of securing the payment of said indebtedness and interest thereon, agreed to the execution and delivery of this preferred mortgage and the promissory note herein described to the said Mortgagee;

NOW THEREFORE, THIS MORTGAGE WITNESSETH:

That in consideration of the premises and the further sum of One Dollar (\$1.00) to him duly paid by the Mortgagee at or before the sealing and delivery of these presents, and for other good and valuable considerations receipt whereof is hereby acknowledged, and in order to secure the payment of the said principal sum of Forty

Thousand Dollars (\$40,000.00) and interest thereon at the rate of seven per cent. (7%) per annum, and of the said note and the performance of all the covenants and conditions herein, the Mortgagor has granted, bargained, sold, conveyed, transferred, assigned, mortgaged, set over and confirmed and by these presents does grant, bargain, sell, convey, transfer

#### EXHIBIT A

assign, mortgage, set over and confirm unto the Mortgagee, its successors and assigns the whole of said vessel, together with all her engines, motors, boilers, machinery, masts, bowsprits, boats, anchors, cables, rigging, tackle, apparel, furniture and all other appurtenances thereunto appertaining and belonging, and any and all additions, improvements and replacements hereafter made in or to the said vessel or any part or appurtenance or equipment thereof;

TO HAVE AND TO HOLD, the said vessel and all the appurtenances, improvements and replacements aforesaid unto the Mortgagee, its successors and assigns forever;

PROVIDED HOWEVER, and these presents are upon the express condition that if the Mortgagor shall pay or cause to be paid to the Mortgagee, or its assigns, the said principal sum of Forty Thousand Dollars (\$40,000.00) and interest thereon at the rate of seven per cent. (7%) per annum by the payment of the following described promissory note in accordance with the terms and conditions thereof, and shall keep, perform and observe all and singular the covenants and promises in these presents expressed to be kept, performed and observed

by, or on the part of the Mortgagor, then this mortgage and the estate and rights hereby granted shall cease, determine and be void, otherwise to remain in full force and effect.

The aforesaid promissory note is as follows:

\$40,000.00                      San Diego, California, July 1, 1927.

In installments at the times hereinafter stated for value received, I promise to pay to the order of the STAR & CRESCENT BOAT COMPANY, at its office in the City of San Diego, State of California, in gold coin of the United States, the sum of Forty Thousand Dollars (\$40,000.00) with interest on the amounts of principal remaining from time to time unpaid, at the rate of seven per cent. (7%) per annum, payable with installments of principal. Said principal sum shall be paid in forty (40) installments of One Thousand Dollars (\$1,000.00) each, on the first day of the months of April, May, June, October, November and December, beginning with the first day of October in the year 1927, and continuing thereafter until paid. Should default be made in the payment of any of said installments of principal or interest when due the whole of the principal sum and interest remaining unpaid shall immediately become due and payable at the option of the holder hereof. This note is secured by a first preferred mortgage of even date, on the motor vessel "Bergen". Should an attorney be employed to enforce the collection of this note I agree to pay reasonable attorney's fees.

JOHN E. HESTON

The Mortgagor for himself, his heirs, executors and administrators hereby covenants and agrees to and with

the Mortgagee, its successors and assigns, to pay the principal amount aforesaid and the interest thereon, and to fulfill, perform and observe each and every one of the covenants, agreements and conditions hereinafter contained.

#### ARTICLE I.

The Mortgagor at his own cost and expense, so long as the said note hereby secured is outstanding, shall keep the vessel insured at its full insurable value, and in no event in a sum less than Twenty Two Thousand Five Hundred Dollars (\$22,500.00) lawful money of the United States. Provided however, that after the reduction of the principal sum of said note to an amount less than Twenty Two Thousand Five Hundred Dollars (\$22,500.00) the amount of insurance may thereafter be reduced to a sum equal to one hundred per centum of the amount remaining unpaid on said principal sum. The Mortgagor shall also at his own expense keep the vessel fully entered in a protection and indemnity association or club in both protection and indemnity classes or covered in the amount above specified by protection and indemnity clauses of like effect in marine insurance policies.

Said marine insurance shall be placed with responsible underwriters in good standing and satisfactory to the Mortgagee under the American Hull Underwriter's Association form of policy insuring against the usual risks covered by such policies and having a deductible average not exceeding five per centum of the insured value, or under such other form as the mortgagee shall approve.

All losses shall be made payable to the Mortgagee for distribution by it (within thirty (30) days after the receipt of the same) to the Mortgagor and the Mortgagee as their interests may appear.

## ARTICLE II

The Mortgagor shall not do any act nor voluntarily suffer, or permit any act to be done, whereby any insurance is or may be suspended, impaired or defeated, and shall not suffer or permit the vessel to engage in any voyage, or to carry any cargo not permitted under the policies of insurance in effect without first covering the vessel to the amount herein provided for by insurance satisfactory to the Mortgagee, for such voyage or the carrying of such cargo.

## ARTICLE III

Neither the Mortgagor, nor the Master of the Vessel, shall have any right, power or authority to create, incur, or permit to be placed or imposed upon the property, subject or to become subject to his mortgage, any lien whatsoever other than for crew's wages, wages of stevedores, and salvage. The Mortgagor shall carry a properly certified copy of this mortgage with the ship's papers and shall exhibit the same to any person having business with the said vessel which might give rise to any lien other than for crew's or stevedores' wages, and salvage; The Mortgagor shall not suffer, nor permit to be continued, any lien, encumbrance, or charge which has, or might have, priority over this mortgage of the vessel to the Mortgagee; but in due course, and in any event within fifteen (15) days after the same becomes due and payable or enforceable against the vessel, shall pay, discharge, or make adequate provision for the satisfaction or discharge of all lawful liquidated claims or demands which if unpaid, might, in equity, in admiralty, at law or by any statute of this, or any other nation where the vessel may be navigating or berthed, have such priority over

this mortgage, or might operate as a lien, encumbrance, or charge upon the vessel, or cause detention in port.

If a libel shall be filed against the vessel, or if the vessel is otherwise levied against or taken into custody, or sequestered by virtue of any legal proceedings in any courts, the Mortgagor shall within fifteen (15) days thereafter cause the said vessel to be released and the lien to be discharged.

#### ARTICLE IV

At all times at his own cost and expense, the Mortgagor shall maintain and preserve the vessel in as good condition, working-order and repair, as the same may be at the date of the execution of this mortgage, so far as may be practicable, ordinary wear and tear and depreciation excepted.

#### ARTICLE V

At all times, the Mortgagor shall afford the Mortgagee, or his authorized representative, full and complete access to the said vessel for the purpose of inspecting the same and her cargoes and papers.

#### ARTICLE VI

The Mortgagor shall pay and discharge, when due and payable from time to time, all taxes, assessments, governmental charges, fines or penalties lawfully imposed upon the said property, subject or to become subject to this mortgage. The Mortgagor shall comply with and satisfy all the provisions of the "Ship Mortgage Act, 1920" and shall establish and maintain this mortgage as a first preferred mortgage under said Act. The Mortgagor shall not sell, mortgage, transfer nor change the flag, of the vessel without the written consent of the Mortgagee first obtained, and any such written consent to any one sale,



transfer, mortgage or change of flag shall not be deemed or held to be a waiver of this provision in respect to any subsequent proposed sale, transfer, mortgage or change of flag. But the Mortgagor while not in default in the performance of any of the covenants, terms or conditions of this mortgage may, for uses lawful for American Vessels, charter the vessel subject to the lien and all the provisions of this mortgage to citizens of the United States as defined in the said Act.

#### ARTICLE VII

In the event this mortgage, or said promissory note, or any provisions thereof, be deemed invalidated, in whole or in part, by any present or future law of the United States, or any decisions of any authoritative courts thereof, the Mortgagor shall execute such other or further instruments as in the opinion of counsel for the Mortgagee will carry out the true intent and spirit of this mortgage.

#### ARTICLE VIII

In case any one or more of the following events, herein termed events of default, shall happen, viz.,

(a) default for more than fifteen (15) days after it falls due in the payment of any installment of interest upon said notes; or

(b) default for more than fifteen (15) days in the due and punctual payment of any installment of principal of said note after the same shall become due; or

(c) default in the due and punctual performance of any of the covenants, terms or conditions of this mortgage; or

(d) the Mortgagor shall sell, or attempt to sell, the vessel or any part thereof, or transfer the flag of the vessel without the written consent of the Mortgagee, or

the vessel shall be libeled, or levied upon, or taken by virtue of any attachment, or execution against the said Mortgagor, or otherwise subjected to liens or claims and not released within fifteen (15) days as herein provided, or the said Mortgagor shall remove, or attempt to remove, the vessel beyond the limits of the United States, save on voyage with the intent to return to the United States, or if legal proceedings are instituted to place the vessel, or any of the property of the Mortgagor, in the hands of a Receiver, Custodian or Trustee in Bankruptcy, or insolvency; then and in each and every such case the Mortgagee may:

(a) declare said note to be immediately due and payable, and said note shall bear interest thereafter at the rate of six per cent. (6%) per annum on the amount of principal and interest then due thereon;

(b) retake the vessel wherever the same may be found and hold, charter, operate, or otherwise use the vessel for such time and upon such terms as the Mortgagee may deem to its best advantage;

(c) retake the vessel wherever the same may be found and sell the same, free from any claims by the Mortgagee, in law, equity, admiralty or by statute, after first giving a printed notice for ten (10) consecutive days (excluding Sunday) in some newspaper of general circulation, published in the City of San Diego, State of California, and in some newspaper, if any is published at the place of sale, which said sale may be held at such place or places, and at such time or times as the Mortgagee may specify and may be conducted without bringing the vessel to the place of sale, and in such manner generally as the Mort-

gagee may deem to its best advantage, and with the right of said Mortgagee to become the purchaser at any such sale.

The happening of any of said events of default shall not authorize the Mortgagee to seek to charge other property of the Mortgagor, it being agreed that said motor vessel only shall be liable therefor.

#### ARTICLE IX

The proceeds of any sale and the net earnings from any management, charter, or other use of the vessel by the Mortgagee under the powers conferred by the preceding articles of this mortgage, together with the proceeds of any insurance and of any claims for damages on account of the vessel, received by the Mortgagee while exercising any of such powers, shall be applied as follows:

First: To the payment of all expenses and charges including the expenses of any sale, the expenses of any retaking, and any other expenses or advances made or incurred by the Mortgagee in the protection of his rights hereunder, and to the payment of any damages sustained by the Mortgagee from the default or defaults of the Mortgagor, with interest as provided for herein; and to provide adequate indemnity against liens claiming priority over this mortgage;

Second: To the payment of said note whether due or not due, with interest to the date of such payment;

Third: Any surplus thereafter remaining shall belong and be paid or returned to the Mortgagor.

#### ARTICLE X

No delay or omission of the Mortgagee to exercise any right or power accruing upon any default shall impair

any such right or power or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given by this mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

#### ARTICLE XI

All the covenants, stipulations and agreements in this mortgage contained are and shall bind and inure to the benefit of the Mortgagor and the Mortgagee, their respective heirs, executors, administrators, successors and assigns.

#### ARTICLE XII

Until default shall have been made in due and punctual payment of the interest or of the principal provided for in said promissory note, or until one or more of the events of default hereinbefore described shall happen, the party of the first part shall be suffered and permitted to retain actual possession of the vessel and to manage, operate and use the same and to collect, receive and enjoy the earnings, revenue, rents, issues and profits thereof.

IN TESTIMONY WHEREOF, the said Mortgagor has hereunto set his hand and seal this 30th day of September, 1927.

JOHN E. HESTON,

Mortgagor

Signed, sealed and delivered in the presence of:

GLENN B. DERLYSHIVE

STATE OF CALIFORNIA :  
: ss.  
COUNTY OF LOS ANGELES :

On this 30th day of September, 1927, before me, A. J. Musante a Notary Public in and for said County and State, came JOHN E. HESTON, known to me to be the person executing the foregoing Mortgage, who being by me duly sworn, did depose and say: That he resides at San Pedro, California; that he is the person whose name is subscribed to the foregoing mortgage; and he acknowledged to me that he signed, sealed, and delivered the said mortgage as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30th day of September, 1927.

(SEAL)

A. J. MUSANTE

Notary Public in and for the County of Los Angeles, State of California. My commission expires March 20, 1931.

STATE OF CALIFORNIA :  
: ss.  
COUNTY OF LOS ANGELES :

JOHN E. HESTON, being first duly sworn, deposes and says: That he is the Mortgagor named in the foregoing mortgage; that said mortgage is made in good faith and without any design to hinder, delay or defraud any existing or future creditor of said Mortgagor or any lienor of the above mentioned vessel.

JOHN E. HESTON

Subscribed and sworn to before me this 30th day of September, 1927.

(SEAL)

A. J. MUSANTE

Notary Public in and for the County of Los Angeles,  
State of California. My commission expires March  
20, 1931.

STATE OF CALIFORNIA :  
: ss.  
COUNTY OF LOS ANGELES :

OAKLEY J. HALL, being first duly sworn, on oath, deposes and says: That he is the President of the Star & Crescent Boat Company, a corporation, the Mortgagee named in the foregoing mortgage, and that the controlling interest in said Star & Crescent Boat Company is free from any alien trust, or fiduciary obligation, and is owned by citizens of the United States; That said corporation is organized under the laws of the State of California, and that the President and Managing Directors thereof are citizens of the United States; that the title to the majority of the stock thereof is vested in such citizens, free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; and that the majority of the voting power of said corporation is vested in citizens of the United States.

OAKLEY J HALL

Subscribed and sworn to before me this 30th day of September, 1927.

(SEAL)

A. J. MUSANTE

Notary Public in and for the County of Los Angeles,  
State of California. My commission expires March  
20, 1931.

A True Copy of the Latest Certificate of Registry.

The United States of America  
Department of Commerce  
Bureau of Navigation

Permanent  
Register No. 24E

Official No.  
116,997  
Letters  
KQHW

Measured: San Diego, Calif. 1926  
Rebuilt at San Diego, Calif. 1926  
Remeasured: San Diego, Calif. 1926

Radio Call:  
Service: Fishing  
Number of Crew: 11.  
Class of Engine: Oil  
Engine I. H. P. 200

CERTIFICATE OF REGISTRY

In Pursuance of Chapter One, Title XLVIII  
"Regulation of Commerce and Navigation,"  
Revised Statutes of United States,

C. C. Bruington, Foot of Broadway, San Diego, State of California, having taken and subscribed the oath required by law, and having sworn that the "Star & Crescent Boat Company" (incorporated under the laws of the State of California), the only owner of the vessel called the Bergen of San Diego, California, whereof Henry Olsen is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1900 at Portland, Oregon, of wood, as appears by T E No. 113 issued at Los Angeles, California, Dec. 1, 1926, now surrendered, vessel name and trade changed,

and said enrollment having certified that the said vessel is a Gas Screw; that she has two decks, two masts, a plain head, and a round stern; that her register length is 90.7/10 feet, her register breadth 23 8/10 feet, her register depth 15 0/10 feet, her height ——— feet; that she measures as follows:

	Tons	100ths
Capacity under tonnage deck	236	05
Capacity between decks above tonnage deck	—	—
Capacity of inclosures on the upper deck, viz: Forecastle —; bridge —; poop —; break —; houses round 14.25, side — chart —, radio —; excess hatchways —; light and air —	14	25
	—	—
Gross Tonnage	250	30
Deductions under Section 4153, Revised Statutes, as amended:		
Crew space, 10.49; Master's cabin, 3.22; Steering gear .90; anchor gear —; Boatswain's stores 13.71; Chart house —; Donkey engine and boiler —; Radiohouse 90; Storage of sails —; Propelling power (actual space 23.65) 175% 41.39	56	
Total Deductions	56	

The following— Net Tonnage 194

described spaces, and no others, have been omitted, viz: Forepeak —, aftpeak —, open forecastle —, open bridge —, open poop —, open shelter deck —, anchor gear —, steering gear —, donkey engine and boiler —, light and air 1.09, wheelhouse 3.38, galley 6.57, condenser —, water closets 2.02, cabins —.

and the said ————— having agreed to the



description and admeasurement above specified, according to law, said vessel has been duly REGISTERED at this PORT.

Given under my hand and seal, at the Port of San Diego, California, this 14th day of March, in the year one thousand nine hundred and twenty-seven.

W. H. WOOLMAN  
Deputy Collector of Customs

Place for Seal  
of  
Naval Officer

No.  
Comptroller of customs

---

Place for Seal  
of  
Collector

---

Commissioner of Navigation.

Seal of the  
Department of  
Commerce.

[Endorsed]: In Admiralty No. 21-J. In the Southern District of the United States District Court for the Southern District of California In Admiralty. Pan American Petroleum Company, a corporation, Libelant, vs. Oil Screw Bergen, her engine, machinery, boilers, boats, tackle, apparel, and furniture, etc., Respondent. Answer to Libel and Interrogatories Attached Thereto Filed Sep 23 1929 R. S. Zimmerman, Clerk By B. B. Hansen, Deputy Clerk Gray, Cary, Ames & Driscoll 1310 Bank of Italy Building, San Diego, California Attorneys for Respondent.

IN THE SOUTHERN DIVISION OF THE UNITED  
STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF  
CALIFORNIA  
IN ADMIRALTY

o o o o

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, )	
	)
	) Libelant, )
	)
	) No. 21-C-J
vs. )	)
	) STIPULATION
OIL SCREW BERGEN, her engine, )	OF FACTS
machinery, boilers, boats, tackle, ap- )	
parel and furniture, etc., )	
	)
	) Respondent. )

o o o o

IT IS HEREBY STIPULATED by and between the parties to the above entitled action that the following facts are true:

I.

That at all times mentioned in the libel herein the Pan American Petroleum Company, Libelant herein, and the Star & Crescent Boat Company, Claimant herein, were and now are corporations duly organized and existing and authorized to transact business in the State of California, and that the Oil Screw Bergen her engine, etc., Respondent herein, was at the time of the filing of the libel herein within the port of San Diego, San Diego County, in the Southern District of California.

II.

That during the months of September and October, 1928, Libelant furnished and supplied to respondent vessel at the port of San Pedro, in the County of Los Angeles, State of California, certain materials and supplies, consisting of oil, gasoline, kerosene, amber Diesel fuel and black Diesel fuel, of the reasonable and agreed value of Two Thousand Sixty-two and 31/100 Dollars (\$2,062.31); that said materials and supplies were furnished to said vessel by Libelant upon eight separate written orders signed by John E. Heston, who was then the owner and managing agent of said vessel.. That said materials and supplies were delivered upon several different written purchase orders, seven of which were identical except as to date and description of the materials, with the following purchase order; No. 3896:

“PURCHASE ORDER

John E. Heston

Lower California Tuna Fisheries

Phone:  
San Pedro 2658

No. 3896

Offices

Municipal Fish Wharf  
Los Angeles Harbor  
San Pedro, Cal.

Date 9-12-28

To Pan Amer. Pet Co. Charge to M/S Bergen  
Deliver to M/S Bergen  
Delivery desired not later than .....

Quantity	Article	Price	Amount
	Fill Lub. Oil Tanks		
1	#9 Lub. Oil	bbls.	
2	#7 “ “	“	

1 #5 " " "  
 900 gals. Gasoline in  
 18 bbls. now aboard  
 John E. Heston  
 By: John E. Heston"

That purchase order No. 3978, dated October 25, 1928, was in the following words and figures:

"PURCHASE ORDER  
 John E. Heston  
 Lower California Tuna Fisheries

Phone:  
 San Pedro 2658

No. 3978

Offices  
 Municipal Fish Wharf  
 Los Angeles Harbor  
 San Pedro, Cal.

Date 10-25-28

To Pan. Am. Pet. Co. Charge to M/S Bergen  
 Deliver to M/S Bergen  
 Delivery desired not later than .....

quantity	Article	Price	Amount
----------	---------	-------	--------

Fill	Lub. Oil tanks #7		
"	Diesel Oil " Amber Diesel		
5	bbls. #9 Lub.		
2	" #7 "		
50	bbls. Gasoline	50 gals per bbl.	
50	" Black Oil (Diesel)	50 gals each	
1	c/s 2/5 starting Gas (S.H. 4)		
1	c/s 2/5 Kerosene (S.H. 4)		
1	c/s 2/5 Starting Gas (U. S. E.)		
2	c/s 2/5 Kerosene (U. S. E.)		
1	dbl. Kerosene		
3	dbl. #5 Lub.		

John E. Heston  
 By: J. E. H."

That designations "(S.H. 4)" and "(U. S. E.)" referred to two smaller fishing vessels operated by the said John E. Heston, as stated in Paragraph III hereof.

That all of said materials and supplies were delivered to the respondent vessel in the Harbor of San Pedro, California, and a delivery ticket accompanied each delivery and was signed in each case either by the Captain or the Chief Engineer of the respondent vessel. That a true statement of the supplies and materials so furnished is attached to the Answer of Libelant to the interrogatories attached to Respondent's Answer, marked "Exhibit A" in said Answer, which is hereby incorporated herein the same as though specifically set out at length herein.

That as each order for materials or supplies was filled, the Libelant rendered to the said John E. Heston an invoice covering the order and that the said invoices so rendered were identical except as to date and the description of the materials with the following invoice, No. 3978:

"INVOICE

Pan American Petroleum Company  
1835 East Washington Street  
Telephone WEStmore 6241

Los Angeles  
10-26-28

PAN-GAS  
PANAM LUBRICATING  
OILS AND GREASES

"Sold to Boat Bergen & Owners  
John E. Heston  
Acct. #1

Your Order No. 3978  
Our Order No.  
Our Invoice No. SP

Shipped to San Pedro, Calif. 16118  
State License tax of three cents per gallon on  
"Motor Vehicle Fuel" is included in this invoice

Products	Quantity	Price	Amount	Total
Pan Am. M. O. #7	140 Gals.	.36½	51.10	
Black Diesel Fuel	1,563 "	.0274	42.83	
Amber Diesel Fuel	2,359 "	.0274	64.64	
				\$158.57

Duplicate—Original Invoice furnished you by driver at time of delivery”

That photographic copies of said typical Purchase Order and Invoice are attached hereto, marked Exhibits “A” and “B” respectively, and made a part hereof.

### III.

That the said Oil Screw Bergen was employed by said John E. Heston as a fishing tender to carry supplies to a fleet of fifteen smaller fishing boats operating in Turtle Bay off the coast of Lower California and to transport the catch of said fleet from Turtle Bay to San Pedro, California.

### IV.

That of the materials and supplies so delivered to the respondent vessel there was actually used by said vessel 4768 gallons of gasoline of the reasonable and agreed value of \$619.48, 6701 gallons of Diesel Fuel of the reasonable and agreed value of \$184.18, 309.8 gallons of #9 lubricating oil of the reasonable and agreed value of \$133.26, 675.3 gallons of #7 lubricating oil of the reasonable and agreed value of \$246.48, 320.3 gallons of #5 lubricating oil of the reasonable and agreed value of \$94.49, and 62.4 gallons of kerosene of the reasonable and agreed value of \$9.36, making a total of \$1287.61; that the remainder of the materials and supplies deliv-

ered to the respondent vessel, consisting of 3785 gallons of gasoline, 4370 gallons of Diesel Fuel, 170 gallons of #9 lubricating oil, 75 gallons of #7 lubricating oil, 60 gallons of #5 lubricating oil, and 30 gallons of kerosene, was transferred to the fishing boats comprising the fleet, owned and operated by said John E. Heston in Turtle Bay, and that said materials and supplies were delivered to the respondent vessel for the purpose of being transported to said fleet of fishing boats, and that for the carriage of the same the respondent vessel received no compensation by way of freight or otherwise.

V.

That the purchase price of said supplies and materials so furnished was due and payable immediately upon delivery of said materials and supplies. That no part of the sum of \$2,062.31, representing the value of the materials furnished to said vessel; or of the sum of \$1,287.61, representing the value of supplies and materials actually used by the respondent vessel, has been paid, although demand therefor has been duly made by respondent, and the whole of said amount, together with interest thereon at 7% per annum from October 26, 1928, is due and owing to Libelant.

VI.

That prior to the time when the said materials and supplies were furnished to said respondent vessel by Libelant, the Star & Crescent Boat Company, Claimant herein, sold the respondent vessel, its engine, etc., to John E. Heston, and as a part of the consideration therefor the said John E. Heston executed his promissory note bearing date the 1st day of July, 1927, payable to the order of Claimant herein, in the principal amount of

Forty Thousand Dollars (\$40,000.). That for the purpose of securing the payment thereof the said John E. Heston made, executed and delivered to Claimant herein, as mortgagee, his preferred mortgage bearing date the 30th day of September, 1927. That a true and correct copy of said preferred mortgage, marked "Exhibit A" is attached to the Answer of Star & Crescent Boat Company, claimant herein, and made a part hereof as fully as though same were herein set out at length.

#### VII.

That at the execution and delivery of said preferred mortgage, and during the time during which the materials and supplies were furnished to respondent vessel by Libellant herein, said vessel was duly registered under the laws of the United States, having its home port in the port of Los Angeles, California.

#### VIII.

That said preferred mortgage was duly filed for record in the office of the Collector of Customs of the Port of Los Angeles, the home port of said vessel, and the residence of the owner of said vessel, and was duly recorded in said office of the Collector of Customs in Book 1349/1 of Mortgages, page 18 et seq., on the 21st day of October, 1927, which said record shows the name of the vessel, the parties to the mortgage, the time and date of the reception of the mortgage, the interest in the vessel mortgaged, and the amount and date of the maturity of the mortgage, in accordance with Section 30, subsection 3 of the Merchant Marine Act of June 5, 1920.

#### IX.

That said preferred mortgage was endorsed upon the documents of the respondents vessel, in accordance with



the provisions of said Act, and that an affidavit was filed with the record of said mortgage, to the effect that the mortgage was made in good faith and without any design to hinder, delay or defraud any existing or future creditors of the mortgagor or any lienor of said vessel. That the original of said affidavit is attached to the original mortgage. That the said mortgage did not stipulate the mortgagee waived the preferred status thereof. That all of the acts and things required to be done by said Merchant Marine Act of June 5, 1920, in order to give the said mortgage the status of a preferred mortgage under said Act, were duly performed or caused to be performed by claimant or the said John E. Heston or the said Collector of Customs in the said Port of Los Angeles.

## X.

That the Collector of Customs for the port of Los Angeles upon the recording of said preferred mortgage delivered two certified copies thereof to the mortgagor, the said John E. Heston, who placed and used reasonable diligence to retain one copy on board the respondent vessel, and at all times the master of said vessel, upon any request of any person having business with the vessel, has exhibited the documents of said vessel, including the copy of said preferred mortgage placed on board. That the said preferred mortgage, prior to recordation, was acknowledged within the State of California, County of Los Angeles, before a Notary Public authorized by the laws of the State of California and of the United States to take acknowledgments of deeds within said county and state. That Libelant did not at any time mentioned herein have any actual knowledge of the execution or

delivery of said preferred mortgage or of the existence of the same.

## XI.

That during the month of February, 1929, Claimant herein requested the said John E. Heston, who was then and for three months prior thereto had been in default in payments under the terms of said mortgage, to execute and deliver to Claimant a bill of sale of respondent vessel and to deliver the possession of said vessel to the Claimant. That after some negotiations the said John E. Heston and the Claimant herein entered into an agreement whereby the said Heston undertook to execute and deliver to Claimant herein a bill of sale of respondent vessel, provided the Claimant would accept the same in full payment of the indebtedness of said John E. Heston, and would cause to be fully satisfied, cancelled and discharged the preferred mortgage recorded in Book 1349/1 of Mortgages, page 18 et seq., as aforesaid, and deliver up to the said Heston his said note in the sum of Forty Thousand Dollars (\$40,000.00); that thereafter and on or about the 1st day of May, 1929, and pursuant to said agreement, the said John E. Heston executed and delivered to Claimant herein a Bill of Sale of respondent vessel, and delivered the possession of said vessel to Claimant herein, and the Claimant herein delivered to said John E. Heston his said note in the amount of Forty Thousand Dollars (\$40,000.) and caused the said preferred mortgage to be recorded in the office of the Collector of Customs, in Book 1349/1 of Mortgages, page 18, et seq., to be fully satisfied, cancelled and discharged and duly entered in the records of the office of the said

Collector of Customs a full satisfaction and discharge of said mortgage.

## XII.

That during the negotiations between the said John E. Heston and claimant herein and prior to the execution or delivery of the Bill of Sale above referred to and the delivery of the possession of the respondent vessel to Claimant, certain conversations were had between the said John E. Heston and the said Claimant; that the parties hereto have been unable to agree as to whether during said negotiations Claimant was advised by the said John E. Heston of the approximate amount and character of the claim of the Libelant herein or what materials and supplies were furnished to respondent vessel; or was advised that the said Heston anticipated that Libelant would take action against respondent vessel, or that Libelant had not at that time instituted any action.

## XIII.

IT IS HEREBY STIPULATED and agreed that at the trial of said action either party may offer evidence of the said conversations or any of them had between the said John E. Heston and the officers or agents of the Claimant, or any other evidence upon this issue; and that this action shall be submitted on the foregoing agreed statement of facts, together with such testimony as may be offered by the said parties as to said conversations, as far as they relate to the said disputed issue.

## XIV.

It is understood and agreed that the parties hereto reserve the right to object to the admission of any fact or facts herein stipulated to, upon any ground upon which

said parties could object, if an attempt were made to prove such fact or facts on the trial of this action.

DATED: April 8, 1930.

GIBSON, DUNN & CRUTCHER,  
By H F Prince

Proctors for Libellant.

GRAY, CARY, AMES & DRISCOLL,

By J. G. Driscoll, Jr.

Proctors for Claimant

Star & Crescent Boat Company

Form M-2-1m-10-26-Jones

PURCHASE ORDER

No. 3896

Phone:

San Pedro 2658

JOHN E. HESTON

Lower California Tuna Fisheries  
offices

Municipal Fish Wharf

Los Angeles Harbor

San Pedro, Cal.

Date 9-12-28

To Pan Amer. Pet. Co.

Charge to M/S Bergen

Deliver to M/S Bergen

Delivery desired not later than \_\_\_\_\_

QUANTITY	ARTICLE	PRICE	AMOUNT
	Fill Lub Oil Tanks		
1	#9 Lub Oil	bbls	
2	#7 " "	"	
1	#5 " "	"	
900	gals Gasoline in 18 bbls now aboard In Recd 4907		

JOHN E. HESTON

By John E. Heston

"EXHIBIT A"

Form 4883  
4512

## INVOICE

(CUT)

Pan American Petroleum Company

1835 East Washington Street

Telephone WESTmore 6241

PAN-GAS

Los Angeles 10-26-28

PA AM LUBRICATING

Oils and Greases

Sold to Boat Bergen &amp; Owners

John E. Heston

Acct. #1

San Pedro, Calif

Shipped to

Your order No. 3978

Our Order No.

Our Invoice No. SP16118

State License Tax of Three Cents Per Gallon On "Motor  
Vehicle Fuel" is included in this invoice

Products	Quantity	Price	Amount	Total
Pan Am M. O. #7	140 Gals.	.36½	51.10	
Black Diesel Fuel	1,563 "	.0274	42.83	
Amber Diesel Fuel	2,359 "	.0274	64.64	
				158.57

Duplicate—Original Invoice furnished you by driver at  
time of delivery

"EXHIBIT B"

[Endorsed]: District Court of the United States In  
and for the Southern District of California In Admiralty  
Pan American Petroleum Company, a corporation, Libel-  
ant, vs. Oil Screw Bergen, her engines etc., Respondent.  
Stipulation of Facts Filed Jun 5-1930 R. S. Zimmer-  
man, Clerk, by M. L. Gaines, Deputy Clerk. Gibson,  
Dunn & Crutcher 1111 Fidelity Building N. E. Cor.  
Sixth and Spring Sts. Los Angeles, Cal. Proctors for  
Libelant

IN THE DISTRICT COURT OF THE UNITED  
STATES, FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA. SOUTHERN DIVISION.  
IN ADMIRALTY.

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, (	
	)
	Libelant, ( No. 21-C-J
	)
vs. (	REQUEST FOR
	) FINDINGS.
OIL SCREW BERGEN, her en- (	
gine, machinery, boilers, boats, tackle, )	
apparel and furniture, etc. (	
	)
	Respondent. )

COMES NOW the libelant and, in accordance with the provisions of Admiralty Rule 46½, 28 U. S. C. A., Section 723, requests the court to make the following specific findings of fact herein, in addition to paragraphs I to XI, inclusive, of the stipulation of facts on file herein, and pursuant to Paragraphs XII and XIII of the said stipulation of facts and the evidence introduced upon the issues covered by the said paragraphs:

I.

The court finds with reference to the issues set forth in Paragraphs XII and XIII of the stipulation of facts herein that during the negotiations between the said John E. Heston and claimant herein, and prior to the execution and delivery of the bill of sale above referred to, and prior to the delivery of the possession of the respondent vessel to claimant, certain conversations were had between said John E. Heston and said claimant. That during the

course of said conversations, said claimant was advised by the said John E. Heston of the fact that libelant herein had furnished materials and supplies, consisting of gasoline, fuel oil and petroleum products, for the use of the respondent vessel, that a substantial portion of the purchase price of said materials so furnished and used by said respondent vessel had not been paid and that the said Heston anticipated that libelant would take action against respondent vessel, but that no action had at that time been instituted.

GIBSON, DUNN & CRUTCHER,

By Ira C Powers

Proctors for Libelant.

The foregoing proposed findings are not allowed except as incorporated in findings of fact and conclusions of law, made, signed and filed herein. Exception allowed to libelant.

Paul J. McCormick

Judge

Apr. 30, 1931.

[Endorsed]: No. 21-C-J. In Admiralty. In the District Court of the United States, for the Southern District of California. Southern Division. Pan American Petroleum Company, a corporation, Libelant, vs. Oil Screw Bergen, etc., Respondent. Request for Findings. Received copy of the within Request for Findings this 23rd day of April, 1931. Gray, Cary, Ames & Driscoll, proctors for claimant. Filed April 30th, 1931. R. S. Zimmerman, Clerk. by B. B. Hansen, Deputy. Gibson, Dunn & Crutcher 634 S. Spring Street. Los Angeles, Cal.

At a stated term, to wit: The January Term, A. D. 1931, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room in the City of Los Angeles on Thursday the 16th day of April in the year of our Lord one thousand nine hundred and thirty-one.

Present:

The Honorable Paul J. McCormick, District Judge.

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, )	
	Libelant, )
	)
vs. )	No. 21-J Adm.
	)
OIL SCREW BERGEN, her en-) )	
gines, machinery, boilers, boats, tackle, )	
apparel and furniture, etc. )	
	Respondent. )

---

The libel herein is dismissed and a decree is accordingly ordered for the claimant with costs of suit herein. See Memorandum Opinion filed this day.

Dated at Fresno, California

April 16, 1931



IN THE UNITED STATES DISTRICT COURT IN  
AND FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA SOUTHERN DIVISION

- - o - -

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, )	
Libelant, )	
)	No. 21-J
vs. )	
)	IN
OIL SCREW BERGEN, her en- )	ADMIRALTY
gines, machinery, boilers, boats, tackle, )	
apparel and furniture, etc., )	
Respondent. )	
)	

---

Attorneys

For Libelant: Messrs. Gibson, Dunn & Crutcher of  
Los Angeles, California.

Attorneys

For Respondent: Messrs. Gray, Cary, Ames & Driscoll  
of San Diego, California.

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MEMORANDUM OPINION OF DECISION ON  
MERITS

This libel has been under consideration for some time. At the hearing and until the libelant cited *Morse Dry Dock Co. vs. Northern Star*, 271 U. S. 552, there appeared to be no question as to the invalidity and unenforceability of a maritime lien upon the vessel "Bergen". In the light of the evidence and the provisions of the "Ship Mortgage Act, 1920" and particularly subsection

R of Section 30 thereof. The language used by Justice Holmes in the main opinion of the *Northern Star*, *Supra.*, has caused no little uncertainty as to the proper rule for this Court to follow in the decision of this matter. Upon mature deliberation of the evidence and analysis of the *Northern Star* case as well as upon examination of all of the other decisions cited by proctors, I have concluded that the language of Justice Holmes that has caused the uncertainty is dicta and does not control this libel. The ruling in the *Northern Star* was that the mortgage under consideration lost its preferred status and its paramount feature over other liens because of the failure of the mortgagee to comply with the conditions specified in the Ship Mortgage Act. It was therefore unnecessary to the decision for the Court to employ the language of Justice Holmes that affords the libellant herein the only refuge that it could possibly claim from the clear and unambiguous verbiage of the Ship Mortgage Act, and the explicit terms of the mortgage involved here. The separate opinion of Justice McReynolds in the *Northern Star* is an indication that unanimity did not exist in the Supreme Court as to the ineffectiveness of the clear language of the Ship Mortgage Act to defeat liens such as that claimed by the libellant herein.

In the proceeding at Bar, the mortgagor was the owner of the vessel "Bergen" and the mortgage was given to secure the payment of the purchase price of the ship. All of the formalities required by the Ship Mortgage Act were complied with and everything required to be done to give the mortgage the preferred status was accomplished. In Article III of the Mortgage it is provided: "Neither the Mortgagor, nor the Master of the Vessel,

shall have any right, power or authority to create, incur, or permit to be placed or imposed upon the property, subject or to become subject to his mortgage, any lien whatsoever other than for crew's wages, wages of stevedores, and salvage." And in Article VI of the mortgage, it is stated: "The Mortgagor shall comply with and satisfy all the provisions of the 'Ship Mortgage Act, 1920,' Vol. 41 U. S. Statutes at Large, 1005, which read as follows:

"Subsection P. Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

Subsection Q. The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessities for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

Subsection R. The officers and agents of a vessel specified in subsection Q shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this section shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefor.

It is clear from the foregoing that if libelant had exercised any diligence whatsoever it would have ascertained that the person ordering the supplies had by his own agreement in the documented and recorded mortgage precluded himself from making purchases that would operate to attach a lien against the ship or that would be effective in pledging the credit of the ship for the supplies. Common prudence would prompt one supplying merchandise to a ship in a transaction where it is sought to impose a maritime lien upon the vessel, to make some enquiry in the manner provided by statute to ascertain the ability of the person ordering the supplies to pledge the credit of the ship therefor. In this matter there is no evidence that the required diligence or prudence was exercised by the libelant and under such circumstances to hold that it is entitled to a maritime lien would be to render wholly ineffectual and entirely meaningless, the applicable subsection R of Section 30 of the "Ship Mortgage Act, 1920."

The libelant is not entitled to a lien against the vessel "Bergen" under the stipulation of facts and the law applicable thereto and it is accordingly ordered that a decree be entered herein for the claimant and that the libel herein be dismissed with costs. Proctors for claimant will accordingly prepare and present such decree under the rules of this Court.

Dated at Fresno, California

April 16, 1931

Paul J McCormick

Paul J. McCormick

United States District Judge

[Endorsed]: No. 21-J Filed Apr 16 1931 R. S. Zimmerman, Clerk By B. B. Hansen Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

----- :

PAN AMERICAN PETRO-	:	
LEUM COMPANY,	:	No. 21-C-J
a corporation,	:	In Admiralty
Libelant, :		
vs.	:	FINDINGS OF FACT
	:	AND
OIL CREW BERGEN, her :	:	CONCLUSIONS
engines, machinery, boilers,	:	OF LAW
boats, tackle, apparel and fur-	:	
niture, etc.,	:	
	:	
Respondent.	:	
----- :		

The above entitled action having duly come on for trial on the pleadings and proofs of the respective parties; Messrs. Gibson, Dunn & Crutcher appearing for the libelant, Pan American Petroleum Company, and Messrs. Gray, Cary, Ames & Driscoll appearing for the claimant, Star & Crescent Boat Company; and the court having duly considered the law and the facts, and having heard the respective advocates, now makes its findings of fact as follows:

-I-

That the facts set forth in paragraphs I to XI, inclusive, of the Stipulation of Facts dated the 8th day of April, 1930, on file herein, are true; and said paragraphs of said Stipulation of Facts are hereby incorporated herein as fully as though set out at length.

-II-

That it is true that during the negotiations between the said John E. Heston and the claimant herein, and prior

to the execution and/or delivery of the bill of sale referred to in paragraph XI of said Stipulation of Facts and the delivery of the possession of the respondent vessel to claimant, certain conversations were had between the said John E. Heston and the president of the claimant corporation; that it is not true that during said negotiations said claimant was advised by the said John E. Heston of the approximate amount and character of the claim of the libelant herein, or what specific materials and supplies were furnished to respondent vessel; nor is it true that the claimant was advised that the said Heston anticipated that libelant would take action against respondent vessel.

AND AS CONCLUSIONS OF LAW from the foregoing findings of fact, the court finds:

1. That libelant acquired no lien against the respondent vessel, her engines, machinery, boilers, boats, tackle, apparel and furniture, etc.

2. That claimant, Star & Crescent Boat Company, is entitled to a decree herein dismissing said libel with costs of claimant.

Let Decree be entered accordingly.

Dated this 30th day of April, 1931.

Paul J. McCormick  
United States District Judge.

[Endorsed]: In the District Court of the United States, in and for the Southern District of California, Southern Division. Pan American Petroleum Company, Libelant, vs Oil Screw Bergen, her engines, etc., Respondent. No. 21-C-J In Admiralty. Findings of Fact and Conclusions of Law. Received copy of within Findings this 23rd day of April, 1931. Gibson, Dunn & Crutcher by Ira C. Powers, attys for libellant. Filed April 30th, 1931 R. S. Zimmerman, Clerk, by B. B. Hansen, Deputy. Gray, Cary, Ames & Driscoll, attorneys at law. Bank of Italy Building, San Diego, California, attorneys for Claimant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

----- :  
PAN AMERICAN PETRO- :  
LEUM COMPANY, :  
a corporation, :  
Libelant, :

No. 21-C-J  
In Admiralty

vs. :

FINAL DECREE

OIL SCREW BERGEN, her :  
engines, machinery, boilers, :  
boats, tackle, apparel and fur- :  
niture, etc. :  
Respondent. :

----- :

This action having duly come on for trial on the pleadings and proofs of the respective parties, and after hearing the respective advocates and due deliberation having been had thereon, and the court having subsequently rendered its opinion in writing in favor of the claimant, Star & Crescent Boat Company, dismissing the libel herein with costs, and the costs of the claimant having been taxed at \$69.50;

Now, on motion of Messrs. Gray, Cary, Ames & Driscoll, proctors for the claimant, IT IS ORDERED, ADJUDGED AND DECREED that the libel of Pan American Petroleum Company, a corporation, against the Oil Screw Bergen, her engines, machinery, boilers, boats, tackle, apparel and furniture, etc., be and the same is hereby dismissed, and that the claimant, Star & Crescent Boat Company, recover of the libelant, Pan American Petroleum Company, the sum of \$69.50 costs as taxed, and that the same shall bear interest until paid.

IT IS FURTHER ORDERED that unless this decree be satisfied, within ten days after service of a notice of entry thereof on the proctors for the libelant, or unless an appeal be taken therefrom in accordance with the rules and practice of this court, that the stipulators on behalf of the libelant cause the engagement of the respective stipulations to be performed or show cause within five days thereafter why execution should not issue against their goods, chattels and credits to satisfy this decree.

DATED April 30th, 1931.

Paul J. McCormick  
United States District Judge.

Approved as to form, as provided in rule 44.

GIBSON, DUNN & CRUTCHER

By Ira C. Powers

Proctors for Libelant.

Decree entered and recorded 4/30/31

R. S. ZIMMERMAN, Clerk

By B. B. Hansen,

Deputy Clerk.

[Endorsed]: In the District Court of the United States, in and for the Southern District of California, Southern Division. No. 21-C-J. In Admiralty. Pan American Petroleum Company, a corporation, libelant, vs. Oil Screw Bergen, her engines, machinery, boilers, boats, tackle, apparel and furniture, etc., respondent. Final Decree. Filed April 30, 1931. R. S. Zimmerman, Clerk, by B. B. Hansen, Deputy Clerk. Gray, Cary, Ames & Driscoll, attorneys at law, Bank of Italy Building, San Diego, California, Proctors for respondent.



IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA. SOUTHERN DIVISION.

PAN AMERICAN PETROLEUM )		
COMPANY, a corporation, (		
	Libelant, (	
	)	No. 21-C-J.
vs. (		
	)	In admiralty.
OIL SCREW BERGEN, her en- (		
gines, machinery, boilers, boats, tackle, )		
apparel and furniture, etc., (		STATEMENT
	)	OF
Respondent. (		TESTIMONY.
	)	
STAR AND CRESCENT BOAT (		
COMPANY, )		
	Claimant. (	
	)	

---

The above entitled cause came on regularly for trial on the 5th day of February, 1931, before the Honorable Paul J. McCormick, Judge presiding in the above entitled Court. Libelant appeared by Messrs. Gibson, Dunn & Crutcher, its attorneys; and claimant, Star and Crescent Boat Company, appeared by Messrs. Gray, Cary, Ames & Driscoll, its attorneys. The said cause was submitted to the Court upon an agreed stipulation of facts on file herein and in addition thereto the following testimony was introduced pursuant to the provisions of Paragraphs XII, XIII and XIV of the said stipulation of facts:

(Testimony of John E. Heston)

JOHN E. HESTON,

called as a witness on behalf of libelant, testified on

DIRECT EXAMINATION

as follows:

That he was acquainted with Capt. Hall, President of the said claimant, and had had several conversations with reference to the unpaid bills of the Pan American Petroleum Company. That the first conversation was in San Digeo, in the summer or fall of 1928, at Capt. Hall's office, at which time Capt. Hall solicited the said Heston's oil business, and that at that time the said Heston told him that he owed a large sum of money to Pan American Petroleum Company and could not give him the business because that company would enforce collection of their account if he did so. That all the boats which he was operating had accounts with the Pan American Petroleum Company. That the same subject was discussed in a later conversation in the latter part of January, 1929, at which time Capt. Hall requested that a cargo of oil be brought on the S. S. "Bergen" to San Diego. That the said Heston told Capt. Hall of the said Heston's financial condition and that taking the boat away from him at that time would embarrass him; that he had considerable accounts out which were against all his boats, and that the boats would be jumped on by the Pan American Petroleum Company to that extent. Capt. Hall insisted upon a delinquent payment being made or the vessel being returned. That he let Capt. Hall bring the "Bergen" to San Diego sometime in February. That he had a later conversation, in February, 1929, with Capt. Hall, in

(Testimony of John E. Heston)

which he told him again that his action in taking over the "Bergen" might cause all his creditors to take action against all Heston's boats, and that he told Capt. Hall at that time that some of the account of the Pan American Petroleum Company was incurred by the "Bergen".

That thereafter he appealed to Mr. Ralph Chandler, another officer of the Star and Crescent Boat Company, in San Pedro or Wilmington, in the latter part of February. That he told Chandler that if the Star and Crescent Boat Company closed down on him at that time it would probably cause other creditors to bring action and put him out of business. That he told Mr. Chandler at that time that the Pan American Petroleum Company was pestering him for his accounts and that he owed the Pan American Petroleum Company an indebtedness which was incurred by all his boats, including the "Bergen". That Mr. Chandler later told him that their decision to take over the boat was final and that subsequently he received a letter from Mr. Driscoll, attorney for the Star and Crescent Boat Company, asking him to save him the trouble of foreclosure proceedings and requesting the said Heston to give back a bill of sale to the boat, which said Heston told him that he would do if they would release the mortgage. A month or so later a Mr. Wickersham, broker in San Pedro, called the said Heston on the telephone and said that he had been asked to record Heston's bill of sale after the satisfaction of mortgage had been recorded. That the said Heston signed the bill of sale and left it with Mr. Wickersham in escrow until the satisfaction of mortgage was recorded.

(Testimony of John E. Heston)

On

CROSS-EXAMINATION,

the said John E. Heston testified as follows:

That at the time of the transactions involved in this case he was engaged in the fishing business in San Pedro and the "Bergen" was used by him as a tender for the purpose of transporting supplies to his fleet and bringing back the fish. That at that time he had a fleet of small boats which were operating off the coast of Lower California. That at the time of the conversation in the early fall of 1928, in Capt. Hall's office, with regard to the oil business of Heston's boats, Heston told Capt. Hall that he owed quite a sum to the Pan American Petroleum Company. That during the conversation in San Diego in Capt. Hall's office in January, 1929, he told Capt. Hall that he was in financial difficulties and owed bills to various creditors which he was unable to pay, and asked for more time to make the payments on the boat.

Q. Now, did you tell him at that time that there were any liens on the "Bergen" by the Pan American Petroleum Company or anyone else, or that there were accounts due against the "Bergen"?

A. There were accounts due against the "Bergen", yes, that the "Bergen" was responsible for some of my indebtedness.

Q. You said the "Bergen" was responsible for some of your indebtedness?

A. Yes, it would be, if liens were filed.

Q. It would be if liens were filed?

A. Yes.

(Testimony of John E. Heston)

Q. Now, precisely, if you know, what did you say in that conversation, Mr. Heston?

A. Why, I said that there had been no liens filed.

Q. There had been no liens?

A. There had been no liens filed, and the fact that if I had a good spring season this year I could work out of all my difficulties and pay all the bills that I owed.

That at the time of the later conversation in February in San Diego, he told Capt. Hall of the account due against the "Bergen" which is involved in this suit,—that he was pretty clear on that. That by the terms of the bill of sale to the Star and Crescent Boat Company he warranted to defend the vessel against any claims and had in mind the claim of the Pan American Petroleum Company at that time.

Counsel for the claimant thereupon produced a letter, dated April 4, 1929, addressed to John E. Heston from the attorneys for the claimant herein, which was marked, "Claimant's Exhibit A" for identification, and which contained the statement: "We have requested Mr. Chandler, before consummating the transaction, to ascertain whether or not the records show any liens or encumbrances subsequent to the mortgage. In the event that the existence of subsequent liens is indicated, the document should not be recorded until an adjustment is arranged with the lienholders. Mr. Heston testified that he did not remember receiving that letter.

(Testimony of John E. Heston)

On

RE-DIRECT EXAMINATION  
MR. HESTON

testified as follows:

That he executed and delivered the bill of sale to Mr. Wickersham, a customs broker, with the understanding that it would not be recorded until after the satisfaction of the mortgage was recorded. That Mr. Wickersham was representing both parties, having received instructions also from Mr. Chandler on behalf of the Star and Crescent Boat Company.

Q. Was anything said at that time about any liens against the boat?

A. The main part of the conversation was getting these documents recorded. As I recollect it, he said, "You have got no bills out", and I said, "Well, there is plenty of bills out, but there has been no liens—but there has been no liens filed against the boat. As far as the boat record is concerned, it is clear yet." Of course, at this time I expected to work out of these difficulties.

Q. When you say "No liens filed", you mean no suits filed?

A. There had been no suits filed, no.

Q. Which did you say?

A. I said there had been no suits filed or liens filed at that time. I thought a lien was a suit.

Q. You thought a lien was a suit?

A. Yes.

(Testimony of Capt. Oakley J. Hall)

CAPT. OAKLEY J. HALL,

called as a witness on behalf of claimant, Star and Crescent Boat Company, testified on

DIRECT EXAMINATION

as follows:

That he is the President of the Star and Crescent Boat Company. That he has known Mr. Heston for about ten or twelve years. That he had heard Mr. Heston's testimony. That he conducted the transaction on behalf of the Star and Crescent Boat Company by which the Oil Screw "Bergen" was sold to Heston during the year 1927. That it was in June or July, 1929, when he first learned that the Pan American Petroleum Company claimed a lien on the "Bergen" for supplies furnished during the fall of 1928. That he could fix the date when he first learned of the claim of the Pan American Petroleum Company by referring to a letter from the Pan American Petroleum Company which was dated July 3, 1929. That prior to that time he had no knowledge of the existence of this claim. That he did recall having several conversations with Mr. Heston, but that he could not recall the exact dates. That at the first conversation in which the matter of his company's furnishing the fuel to Mr. Heston's fleet was discussed, Mr. Heston said that he was deeply in debt to the Pan American Petroleum Company and for that reason he could not give Capt. Hall any business, as they were liable to jump on him for payment of past due accounts. That nothing was said at that time with reference to a claim against the "Bergen" for fuel, oil or supplies. That he did not understand at that time that

(Testimony of Capt. Oakley J. Hall)

the Pan American Petroleum Company had any claim against the "Bergen". That his understanding was that the Pan American Petroleum Company had claims against Mr. Heston for various fuel bills. That he knew that Heston had been operating tenders and fishing boats on the coast for a good many years. That it was his impression that Mr. Heston had been doing most of his business for several years with the Pan American Petroleum Company. That he did not know that there was any account held against the "Bergen". That in the conversation in January, 1929, in San Diego, he asked Mr. Heston to bring some oil to San Diego and suggested that the "Bergen" be put in drydock here, so that his company could do the necessary work on her. That as he recalled, that was about all the conversation. That he did not remember whether anything was said at that time about the payment of Heston's indebtedness. That a little later the vessel was brought down and that he told Heston the company could not let her go on any more trips until the past due payment had been made. That he had several later conversations with Mr. Heston with regard to making the past due payments on the boat, but that he did not remember anything being said about any claim of the Pan American Petroleum Company or others against the "Bergen" in any of these conversations.

That after the "Bergen" was brought down here, Capt. Hall and the Star and Crescent Boat Company looked into the matter of navigating insurance and found that the insurance premiums had not been paid. That he took this up with his attorneys who told him that the insur-



(Testimony of Capt. Oakley J. Hall)

ance premiums would not be a lien against the vessel. That when the claimant accepted back the bill of sale of the "Bergen" and delivered the satisfaction of mortgage, it did not have any knowledge of the existence of the claims against the vessel at all. That Mr. Ralph Chandler, who is another officer of the Star and Crescent Boat Company, handled the matter for the company in San Pedro. That he handled the transaction with Mr. Heston in San Pedro. That Capt. Hall's correspondence and conversations were all with Mr. Chandler personally. That he wrote Mr. Chandler and told him that the quickest way, as he recalled it, to handle the deal would be for the company to take a bill of sale on the vessel, and that he cautioned Chandler not to accept a bill of sale or record the satisfaction of mortgage if there were any liens against the vessel, and cautioned him to make all necessary investigation to find out whether there were any liens against the vessel.

There was thereupon offered and received in evidence, on behalf of claimant and marked, "Claimant's Exhibit B", the letter dated April 4th, 1929, which said letter was addressed to Mr. R. J. Chandler, Wilmington, California, and reads as follows:

"I would like to make it very clear to you, in case we take title to the 'Bergen', without foreclosing our mortgage, if there should be any liens against the vessel in the way of repairs, supplies, or in fact, any liens whatever, we would be liable for them. I would ask that you be reasonably sure that there are no liens before having title to the vessel recorded in your name. If you

(Testimony of Capt. Oakley J. Hall)

think there are any such claims, the best way to do would be to foreclose on the mortgage.”

That the said letter was signed by Capt. Hall for the Star and Crescent Boat Company.

The said Capt. Hall further testified that he knew that the claimant had a preferred mortgage against the vessel, but was not sure about the points of law in admiralty as to whether the claim would be a lien on the vessel and take precedence over the mortgage. That the mortgage was not foreclosed for the reason that the company wanted to convert the “Bergen” into a towboat which they needed immediately and did not want to delay for the length of time required for foreclosure. That another reason was that Mr. Heston had told him that it would reflect on his credit and make it embarrassing for him if the mortgage was foreclosed, and that he believed that was one of the principal reasons why they took back the bill of sale, instead of foreclosing the mortgage. That he knew all the time that if they let the thing go through the regular channels and had foreclosed the mortgage and bid the vessel in, that there wouldn't be any liability for any claim coming back on them. That at the time the suit was filed the “Bergen” was being converted.

On

CROSS-EXAMINATION  
CAPT. HALL

testified that his attention was first called to the conversations which he had had with Mr. Heston about two weeks prior to the trial. That he was not very clear as to just what was said in any particular conversation, except that

(Testimony of Capt. Oakley J. Hall)

Mr. Heston's testimony here refreshed his memory on several of the conversations that he had. That he did not know whether Heston's indebtedness that he spoke to him about in the fall of 1928 was confined to any particular boats or not. That he happened to make the investigation with regard to insurance at the time the 'Bergen' was chartered to Van Camp Sea Food Co. for a trip down the coast. That his company naturally wanted to see that the vessel was covered with insurance, and that he took it up with his insurance brokers to see what insurance he could get on the trip. They had considerable correspondence or conversation about it, and his insurance brokers told him that the premiums on the insurance that Mr. Heston had on the vessel previous to this time had not been paid. That this was the only investigation that he personally made to determine whether any bills had been paid by Mr. Heston. That he requested Mr. Chandler in San Pedro to make investigations there to see if there were any bills. That it was thereupon stipulated that Mr. Wickersham act as a broker in connection with the delivery of the bill of sale and the satisfaction of the mortgage, having been designated either by Mr. Heston or by Mr. Chandler in Los Angeles to receive the bill of sale from Heston and hold it until such time as the satisfaction of mortgage was recorded.

## STIPULATION

IT IS HEREBY STIPULATED by and between the parties hereto that the foregoing statement of testimony is true and correct and constitutes all of the evidence offered and received at the trial of the said action, and that the same may be made a part of the record on appeal in the above entitled cause.

DATED: April 11th, 1932.

GIBSON, DUNN & CRUTCHER,

By Ira C Powers

Proctors for Libelant.

GRAY, CARY, AMES & DRISCOLL,

By J. G. Driscoll Jr.

Proctors for Claimant.

I hereby certify the within and foregoing to be a true and correct statement of the testimony taken at the trial of the above entitled action. The same is accordingly allowed and settled and ordered filed as a part of the record in this cause.

DATED: April 20th, 1932.

Paul J. McCormick

Judge of the United States District Court.

[Endorsed]: No. 21-C-J In Admiralty. District Court of the United States In and for the Southern District of California Southern Division Pan American Petroleum Company, a corporation, Plaintiff vs. Oil Screw "Bergen", etc., Respondent, Star and Crescent Boat Company, Claimant. Statement of Testimony Filed Apr 20 1932 R. S. Zimmerman, Clerk By Theodore Hocke Deputy Clerk Gibson, Dunn & Crutcher 634 South Spring Street MUtual 5381 Los Angeles, Cal. Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, (	
	No. 21-C-J
Libelant, (	
	In Admiralty
vs. (	
OIL SCREW BERGEN, her engine, (	NOTICE OF
machinery, boilers, boats, tackle, ap- )	APPEAL
parel and furniture, etc., (	
Respondent. (	
_____ )	

To R. S. Zimmerman, Clerk of the above entitled Court, and to Gray, Cary, Ames & Driscoll, Proctors for claimant Star & Crescent Boat Co., Bank of Italy Building, San Diego, California.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE, that Pan American Petroleum Company, a corporation, the libelant in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree entered herein on the 30th day of April, 1931, and from each and every part of said decree.

DATED: This 22d day of July, 1931.

GIBSON, DUNN & CRUTCHER, Proctors for libelant, 634 South Spring St., Los Angeles, California, By Robert F. Schwarz

[Endorsed]: Original No. 21-C-J In Admiralty In the District Court of the United States for the Southern



of Appeal herein referred to a citizen of the United States over the age of eighteen (18) years and not a party to the above entitled action; that he served said Notice of Appeal upon Gray, Cary, Ames & Driscoll, Proctors for Claimant, Star & Crescent Boat Co., by leaving a copy thereof with J. G. Driscoll, Jr., a member of said firm of proctors, at his office in the Bank of America Building, San Diego, California, on July 23, 1931.

Charles Fox

SUBSCRIBED AND SWORN to before me this 23rd day of July, 1931.

[Seal]

Marian B. D'Ave

Notary Public in and for said County and State.

[Endorsed]: Original No. 21-C-J District Court of the United States In and for the Southern District of California Southern Division Pan American Petroleum Company, a corporation, Libelant vs. Oil Screw Bergen, her engine, machinery, boilers, etc. Respondent. Affidavit of Service of Notice of *Trial* Filed Jul 27 1931 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk. Gibson, Dunn & Crutcher 634 South Spring Street, Los Angeles, Cal. Attorneys for Libelant.

IN THE SOUTHERN DIVISION OF THE UNITED  
STATES DISTRICT COURT, FOR THE  
SOUTHERN DISTRICT OF  
CALIFORNIA.

IN ADMIRALTY.

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, (	
	)
	Libelant, (
	)
	No. 21-C-J
vs. (	
	) ASSIGNMENTS
OIL SCREW "BERGEN", her en- (	OF ERROR
gines, machinery, boilers, boats, )	
tackle, apparel and furniture, etc., (	
	)
	Respondent. (
	)

Comes now the libelant, Pan American Petroleum Company, a corporation, the appellant herein, and makes the following assignments of error upon which it will rely in the prosecution of the appeal herein:

I.

The Court erred in making that portion of Finding No. II, reading as follows:

"That it is not true that during said negotiations said claimant was advised by the said John E. Heston of the approximate amount and character of the claim of the libelant herein, or what specific materials and supplies were furnished to the respondent vessel."

II.

The Court erred in making that portion of Finding No. II reading as follows:



“Nor is it true that the claimant was advised that the said Heston anticipated that libelant would take action against respondent vessel.”

## III.

The Court erred in failing and refusing to make, as requested by libelant, the following finding of fact:

“That during the course of said conversations, said claimant was advised by the said John E. Heston of the fact that libelant herein had furnished material and supplies, consisting of gasoline, fuel oil and petroleum products, for the use of respondent vessel, that a substantial portion of the purchase “price of said materials so furnished and used by said respondent vessel had not been paid and that the said Heston anticipated that libelant would take action against respondent vessel, but that no action had at that time been instituted.”

## IV.

The Court erred in failing to find upon the issues of fact arising upon the trial of said action pursuant to paragraphs XII and XIII of the stipulation of facts herein, in omitting to find whether claimant was advised by the said John E. Heston during the times referred to in said paragraph XII of the approximate amount and character of the claim of libelant herein, or what materials and supplies were furnished to the respondent vessel, or that libelant had not at that time instituted any action.

## V.

The evidence received upon the trial of the above cause was and is wholly insufficient to justify the findings of the trial court.

## VI.

The evidence received upon the trial of the above cause was and is wholly insufficient to justify that portion of Finding No. I of the trial court reading as follows:

“That it is not true that during said negotiations said claimant was advised by the said John E. Heston of the approximate amount and character of the claim of the libelant herein.”

## VII.

That the evidence received upon the trial of the above cause was and is wholly insufficient to justify Finding No. II of the trial court that it is not true that during the negotiations referred to therein claimant was advised by said John E. Heston as to what specific materials and supplies were furnished to respondent vessel.

## VIII.

The evidence received upon the trial of the above cause was and is wholly insufficient to justify that portion of Finding No. II of the trial court reading as follows:

“Nor is it true that the claimant was advised that the said Heston anticipated that the libelant would take action against respondent vessel.”

## IX.

The Court erred in its conclusions of law in finding that libelant acquired no lien against the respondent vessel, her engines, machinery, boilers, boats, tackle, apparel and furniture, etc., for the reason that evidence received upon the trial was and is wholly insufficient to justify said finding, but said evidence conclusively shows that libelant did acquire a lien against respondent vessel, her engines, machinery, boilers, boats, tackle, apparel and furniture, etc.

X.

The Court erred in its conclusions of law in finding that claimant Star & Crescent Boat Company was entitled to a decree herein dismissing said libel, with the costs of claimant.

XI.

The Court erred in giving, making, rendering and filing its decree in the above entitled action in favor of claimant and against libelant, for the reason that said decree is not supported by the findings of the Court or by stipulation of facts upon which the cause was tried.

XII.

The Court erred in giving, making, rendering and filing its decree in the above entitled action in favor of claimant and against the libelant, for the reason that said decree was and is contrary to law and to the case made and facts stated in the pleadings and in the records in said action, including the agreed stipulation of facts on which the said cause was tried.

WHEREFORE, libelant and appellant prays that the decree rendered against the said libelant and appellant be corrected and that speedy justice be done to the parties in that behalf.

H. F. PRINCE

IRA C. POWERS

GIBSON, DUNN & CRUTCHER,

By Ira C. Powers

Proctors for Libelant and Appellant.

## Certificate of Counsel.

We, the undersigned attorneys, certify that the foregoing assignments of error is made on behalf of the libelant and appellant Pan American Petroleum Company, a corporation, and is, in our opinion, well taken, and the same now constitutes the assignments of error relied upon in the prosecution of the appeal herein.

H. F. PRINCE

IRA C. POWERS

GIBSON, DUNN & CRUTCHER,

By Ira C. Powers

Proctors for Libelant and Appellant.

[Endorsed]: Original In Admiralty. No. 21-C-J District Court of the United States In and for the Southern District of California Southern Division Pan American Petroleum Company, a corporation, Libelant, vs. Oil Screw "Bergen", etc., Respondent. Assignments of Error Filed Apr 26 1932 R. S. Zimmerman, Clerk By C. A. Simmons, Deputy Clerk Gibson, Dunn & Crutcher 634 South Spring Street MUtual 5381 Los Angeles, Cal. Proctors for Libelant and Appellant

COLUMBIA CASUALTY COMPANY Bond

No. 15684

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

PAN AMERICAN PETROLEUM )	
COMPANY, a corporation, )	21-C-J
Libelant, )	
	) UNDERTAK-
	) ING FOR
-vs-	) COSTS ON
	) APPEAL
OIL SCREW BERGEN, her )	(Pursuant to the
engine, machinery, boilers, boats, )	rules and practice
tackle, apparel and furniture, etc., )	of this Court)
	)
Respondent. )	

WHEREAS, the libelant in the above-entitled action has appealed to the United States Circuit Court of the Ninth Circuit, from a judgment made and entered against said libelant in said action in the United States District Court of the United States, for the Southern District of California, Southern Division, in favor of the respondent in said action on the 30th day of April, A. D. 1931, dismissing the libel herein.

NOW, THEREFORE, in consideration of the premises, and of such appeal, the COLUMBIA CASUALTY COMPANY, a corporation organized and existing under and by virtue of the laws of New York, and authorized to transact its business of suretyship in the State of

California, as Surety, does hereby undertake and promise, on the part of the libelant, that the said libelant shall prosecute its appeal to effect and pay all the costs if the appeal is not sustained, not exceeding Two Hundred Fifty and no/100 (\$250.00) to which amount it acknowledges itself bound.

IN WITNESS WHEREOF, the said COLUMBIA CASUALTY COMPANY has caused this obligation to be signed by its duly authorized Attorney-in-Fact at Los Angeles, California and its corporate seal to be hereto affixed, this 5th day of August, A. D. 1931.

COLUMBIA CASUALTY COMPANY

By R. L. TRAVISS

[Seal]

R. L. TRAVISS-Attorney-in-Fact

STATE OF CALIFORNIA                    )  
  ) ss  
County of Los Angeles                 )

On this 5th day of August A. D. 1931, before me, C. B. Fisher, a Notary Public in and for the County of Los Angeles personally appeared R. L. Traviss, Attorney-in-fact of the COLUMBIA CASUALTY COMPANY, to me personally known to be the individual described in and who executed the within instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposeth and saith, that he is the said Attorney-in-fact of the Company aforesaid, and that the seal affixed

to the within instrument is the corporate seal of the said Company, and that the said corporate seal and his signature as such Attorney-in-fact were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the city of Los Angeles, State of California the day and year first above written.

C. B. Fisher

[Seal] Notary Public in and for said County of Los Angeles, State of California. My Commission Expires Jan. 4, 1934

[Endorsed]: 21-J Columbia Casualty Company Home Office One Park Avenue, New York, N. Y. Charles H. Neely President Bond No. 15684 Issued to Pan American Petroleum Company, a corporation, Libelant vs. Oil Screw Bergen, her engine, machinery, boilers, boats, tackle, apparel and furniture, etc., Respondent Filed Aug. 5, 1931 R. S. Zimmerman, clerk by Edmund L. Smith, deputy clerk.

## PRAECIPE

UNITED STATES OF AMERICA  
DISTRICT COURT OF THE UNITED STATES  
SOUTHERN DISTRICT OF CALIFORNIA

PAN AMERICAN PETROLEUM COMPANY, a corporation,	}	Clerk's Office.
Libelant		No. 21-C-J
-vs-		In Admiralty.
OIL SCREW "BERGEN", her engine, machinery, boilers, boats, tackle, apparel and furniture, etc.,	}	Amended Praecipe
Respondent.		

To the Clerk of Said Court:

Sir:

Please issue under the hand and seal of the Court, a certified transcript of record in the above entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, on the appeal in said cause, including therein:

- (1) Libel for material and supplies.
- (2) Claim of Star & Crescent Boat Company.
- (3) Answer to libel (omitting interrogatories attached thereto).
- (4) Stipulation of facts.
- (5) Monition.
- (6) Minute order dismissing libel.
- (7) Libelant's request for findings.
- (8) Findings of fact and conclusions of law.



- (9) Decree.
- (10) Opinion of Hon. Paul J. McCormick, Judge.
- (11) Statement of testimony.
- (12) Orders extending time for docketing record on appeal.
- (13) Assignments of error.
- (14) Stipulation for costs.
- (15) Certificate of the Clerk.

H. F. PRINCE

IRA C. POWERS

GIBSON, DUNN & CRUTCHER,

By Ira C. Powers

Proctors for Libelant and Appellant.

[Endorsed]: May 25, 1932. Receipt of copy of the within amended praecipe is hereby acknowledged. Gray, Cary, Ames & Driscoll, by J. G. Driscoll, Jr., Attorneys for Respondent. Original No. 21-C-J U. S. District Court Southern District of California Pan American Petroleum Company, etc., Libelant, vs. Oil Screw "Bergen", etc., Respondent. Amended Praecipe for Numerous Documents. Filed May 28, 1932 R. S. Zimmerman, clerk by Theodore Hocke, deputy clerk Gibson, Dunn & Crutcher 1111 Merchants National Bank Building N. E. Cor. Sixth & Spring Sts. Los Angeles, Cal. MUtual 5381

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT  
OF CALIFORNIA SOUTHERN  
DIVISION

_____ )	)	
PAN AMERICAN PETROLEUM )	)	
COMPANY, a corporation, )	)	
Libelant, )	)	
vs. )	)	No. 21-C-J
)	)	In Admiralty
OIL SCREW BERGEN, her engine, )	)	
machinery, boilers, boats, tackle, ap- )	)	
parel and furniture, etc., )	)	
Respondent. )	)	
_____ )	)	

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 83 pages, numbered from 1 to 83 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the libel; monition; claim of Star & Crescent Boat Company; libelant's stipulation for costs; answer to libel with the interrogatories attached thereto omitted; stipulation of facts; request for findings; minute order dismissing libel; memorandum opinion; findings of fact and conclusions of law; final decree; statement of testimony; notice of appeal; assignments of error; bond on appeal and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to ..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this..... day of ..... in the year of Our Lord One Thousand Nine Hundred and Thirty-two, and of our Independence the One Hundred and Fifty-sixth.

R. S. ZIMMERMAN,

Clerk of the District Court of the  
United States of America, in  
and for the Southern District of  
California.

By

Deputy.

